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NO. 75-657

Local 3489, United Steelworkers of America, AFL-CIO and United Steelworkers of America, AFL-CIO,
Petitioners,

v.

William J. Usery, Secretary of Labor,
Respondent.

On Writ of Certiorari to the
United States Court of Appeals
for the Seventh Circuit

SUPPLEMENTAL BRIEF

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At oral argument in this matter, the Secretary of Labor brought this Court's attention to a recent decision by the Court of Appeals for the First Circuit in a case involving a meeting attendance rule of another union. *Usery v. Local Division 1205, Amalgamated Transit Union,* No. 76-1235, ... F.2d .... (1st Cir., slip opinion filed November 17, 1976). In this Supplemental Brief, we show briefly that the Transit Union's local rule in that case is significantly different from the Steelworkers' rule and that the First Circuit, assuming its decision to be correct, rested on grounds largely at odds with the position of the Secretary of Labor here.

The Amalgamated Transit Union is one of those international unions which, by constitution, grants its local unions the option of adopting meeting attendance requirements. The bylaw adopted by Local Division 1205 provided that candidates for local office must have at-

tended not less than six regular meetings each year during the twenty-four months prior to the election.

There are a number of obvious differences between this case and *Local Division 1205*. First, the burden imposed on members desiring to attend union meetings was much greater there than it was here. Members were based in Boston, Massachusetts, Portland and Bangor, Maine, Hartford and New Haven, Connecticut and Providence, Rhode Island but the Local's meetings were held only in Portland and Boston, necessitating travel over substantial distances. In the present case, by contrast, the meeting was held at a local union hall a few minutes away from the one plant at which all of Local 3489's members were employed. As for the rule itself, in *Local Division 1205,* attendance was required at one-half the meetings in *each* year of the term rather than *over* the entire term.[1] This requirement for compliance separately in each year weighed heavily in the First Circuit's decision.

The First Circuit held the Local Division 1205 rule to be unreasonable. In doing so, however, it rested on grounds which not only differ from those advanced here by the Secretary but actually undercut the Secretary's position in this case. Thus, for example, the Secretary places primary emphasis on the percentage ineligible. The First Circuit, though it considered that fact, refused to give it "conclusive weight" as the Secretary asked. Seemingly more important to that court was the question of how burdensome was the requirement, a test under which, we submit, the petitioners herein must

1. The Steelworker term of office is three years while the term of office in Local Division 1205 is two years.

prevail. The Steelworkers' rule is surely far less burdensome than the nominating petition requirements whose constitutionality has been sustained here, e.g., *Jeness v. Fortson,* 403 U.S. 431 (1971); *American Party of Texas v. White,* 415 U.S. 767 (1974).

The First Circuit also relied heavily on a provision in the Secretary's Interpretive Manual which, at the time of the challenged election, sanctioned rules requiring a member to attend regular meetings for twenty-four months prior to the election.[2] The bylaw requiring members to attend one-half of the meetings *each* year was significantly more burdensome, said the court, than the rule sanctioned by the Secretary.

As this Court is well aware, the Secretary in this case has abandoned all reliance on the provision in his manual which sanctioned two year rules (Resp. Br. 7). Here, the Secretary urges the current interpretive regulation adopted in 1974 which, while recognizing that it is reasonable for unions to establish meeting attendance requirements and that such requirements serve valid union purposes (insuring that candidates have a demonstrated interest in and familiarity with the affairs of the organization), nevertheless warns that such rules may become unreasonable "in the light of all the circumstances of the particular case" including the impact of the rule, i.e., "the number" ineligible (Resp. Br. 15).

2. The regulation went on to indicate that such an attendance requirement could be "unreasonable" if attendance presented an unusual degree of diffiiculty for a significant proportion of the membership. The court in *Local Division 1205* found it unnecessary to decide whether travel presented an unusual degree of difficulty there because it held the rule invalid on other grounds.

The difference between the regulation found compelling by the First Circuit and the successor provision championed by the Secretary here underscores another point. The union in *Local Division 1205* could easily have determined that its bylaw, because it required attendance at six meetings in each year, did not comply with the Secretary's two-year regulation. In marked contrast, no union can know in advance whether its meeting attendance requirement complies with the Secretary's current regulation. As we indicated in our reply brief (p. 3), however, that knowledge is absolutely essential if the Union is to conduct a valid election. This is so because local unions are required by section 401(e), 29 U.S.C. §481(e) to conduct elections in accordance with the constitution and bylaws insofar as they are not inconsistent with the Act. Accordingly, the *failure* to apply a constitutionally mandated meeting attendance rule by qualifying a candidate who has not complied therewith, would invalidate the election unless it was ultimately determined that the rule could not be lawfully applied in that election because it disqualified too many potential candidates. Because the Secretary's current regulation articulates no standard, unions cannot with any reasonable degree of assurance determine whether a meeting attendance rule *must be* enforced or must be disregarded. Thus, unless that regulation is disapproved, unions retain any meeting attendance rule at their peril although such rules "insure that candidates have a demonstrated interest in and familiarity with the affairs of the organization. . . ." (Resp. Br. 15, 29 C.F.R. 452.38).

For the reasons set forth above, petitioners respectfully submit that the First Circuit's decision in *Usery v. Local Division 1205, Amalgamated Transit*

Union is distinguishable from the present case and does not support the position taken here by the Secretary of Labor.

Respectfully submitted,

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